

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

RECOMMENDATION ON MOTION FOR CLARIFICATION

Before the court is the motion of Federal Express Corporation d/b/a Federal Express, for clarification of the court's order of April 9, 2008, which granted the plaintiff, Joe M. Ray, Jr. ("Ray"), leave to amend his complaint. Ray filed a response requesting the court to allow him to remedy any issue and allow the case to move forward. The motion was referred to the United States Magistrate Judge for determination.¹ For the reasons that follow, it is recommended that the district court enter an order dismissing Federal Express Corporation from this lawsuit without prejudice and require Ray to file and docket an amended complaint naming FedEx Services as the defendant, have a new summons issued for FedEx Services, and serve the new summons

¹Because the resolution of this motion requires the entry of an order of dismissal, a recommendation is being issued instead of an order of determination.

along with a copy of the amended complaint on FedEx Services pursuant to Rule 4 of the Federal Rules of Civil Procedure.

PROCEDURAL HISTORY

Ray filed his *pro se* complaint against Federal Express, a summons was issued, and Federal Express Corporation filed an answer. (*Pro Se* Complaint, Doc. No. 1, Sept. 19, 2007; Summons, Doc. No. 8, Feb. 13, 2008; Answer, Doc. No. 9, Feb. 28, 2008.) After being advised by counsel for Federal Express Corporation that Federal Express Corporation had not employed Ray, but instead FedEx Corporate Services had employed him, Ray filed a motion for leave to amend his complaint on April 3, 2008. (Mot. Amend. Compl., Doc No. 11, Apr. 3, 2008.) In that motion, Ray requested that the court amend the complaint by changing the defendant to FedEx Services. (*Id.*) On April 9, 2008, this court granted Ray's motion and directed him to obtain a summons from the court for service on FedEx Services. (Order Granting Mot. Amend., Doc. No. 12, Apr. 9, 2008.) Ray obtained and filled out a summons from the court for the amended defendant FedEx Services, and served the summons on FedEx Services. There is no indication on the docket that he served either his original or amended complaint along with the summons.

ANALYSIS

Pursuant to court order, Federal Express Corporation is no longer a party to this case. (Order, Doc. No. 12.) As required by the court's order, Ray served a summons on FedEx Services, on

April 14, 2008. (Summons, Doc. No. 13.) Although Ray should have attached his amended complaint to the summons served on FedEx Services, the court's April 9, 2008 order did not require or direct him to do so. Because Ray was unaware that he was required to attach his amended complaint to his summons, this court will not fault him for such an oversight.

CONCLUSION

Because there is no order of dismissal of Federal Express Corporation from this lawsuit, no amended complaint on file, and no service of an amended complaint on FedEx Services, it is recommended that the district court enter an order dismissing Federal Express Corporation from this lawsuit without prejudice and require Ray to file and docket an amended complaint naming FedEx Services as the defendant, have a new summons issued for FedEx Services, and serve the new summons along with a copy of the amended complaint on FedEx Services pursuant to Rule 4 of the Federal Rules of Civil Procedure. The Clerk of Court is directed to serve a copy of this recommendation on Federal Express Corporation in the care of John W. Campbell at the following address: 3620 Hacks Cross Road, Building B, Third Floor, Memphis, TN 38125. The clerk is also directed to serve a copy of this recommendation to FedEx Services at the following address: 800 South Gay Street, Suite #2021, Knoxville, TN 37929-9710.

Respectfully submitted this 18th day of June, 2008.

s/ Diane K. Vescovo
UNITED STATES MAGISTRATE JUDGE